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COMMUNITY FINES AND COLLECTIVE RESPONSIBILITY

(Being Part XIII of Some Questions of International Law in the European War, continued from previous numbers of the JOURNAL.)

THE theory of collective responsibility for offenses committed by the civil population of occupied districts against the authority of the occupying belligerent has been interpreted in a wider sense and applied on a more extensive scale by German military commanders during the present war than was ever done in any war of the past. The punishments imposed in the application of the theory have been unprecedented in number, sometimes novel in form and often excessive in character. They have consisted of pecuniary fines, either direct or under the guise of contributions, the seizure and shooting of hostages, the burning of towns and villages, the destruction of private houses, the deportation of the civil population, the commercial isolation of refractory towns, the interdiction of public charitable relief to the unemployed, the confinement of the inhabitants within doors for certain periods, and the like.¹ It is the main purpose of this paper to review German theory and practice in respect to the first mentioned of these punitive expedients.

As a general principle, the right of a military occupant to impose, under certain conditions, pecuniary and other punishments upon occupied districts, for acts committed by the civil population against his authority, has long been recognized and acted upon in practice. Among the earlier instances of a resort to such a measure was the action of Napoleon, who, during his occupation of Lombardy in 1796, announced that any district under his occupation, in which firearms were found in possession of the inhabitants, should be liable to a fine equal to one-third its revenue (presumably the annual revenue).² A like penalty

¹ Some instances in which the three last mentioned expedients have been resorted to by the Germans in the present war were considered in my article on "Contributions, Requisitions and Compulsory Service in occupied Territory" in the January number, 1917, of this JOURNAL, especially pp. 104 ff.

² Hall, International Law, 4th ed., p. 492.

was threatened against any village in which a French soldier had been killed, unless the individual perpetrator of the crime was arrested and delivered up to the local authorities.³

It was not until the Franco-German War of 1870-71, however, that the theory of collective responsibility was applied on an extensive scale and interpreted to cover offenses for which the population punished could not have been justly held responsible. In August, 1870, a general order was issued by the Prussian military authorities decreeing that French communes in which hostile acts were committed against their authority by persons not belonging to the French army should be liable to a fine equal to the amount of the local land tax, and that those communes from which individual offenders came should be liable to the same punishment.⁴ In October of the same year it was announced that communes in which damage was done to railways, bridges, canals and telegraph lines, even when the mischief was wrought by others than the local inhabitants and without their knowledge and connivance, should be held responsible for such acts.⁵

These announcements turned out to be more than empty threats, for in fact huge fines were imposed and collected in many instances. Thus Lorraine, in addition to other penalties, was fined 10,000,000 francs for the destruction of a bridge with the alleged connivance of the inhabitants.⁶ In June, 1871, the village of Bray was fined 37,500 francs and hostages were taken to insure the payment of the fine.⁷ Combles was required to pay 325,000 francs for an offense not mentioned in the accounts, and Driencourt was assessed 1000 francs because a stranger was found in the village.⁸ The commune of Launois

³ Hall, *International Law*, 4th ed. p. 491.

⁴ Concerning this order see Bonfils, *Droit International*, sec. 1219; Calvo, *Droit International*, sec. 2236; Spaight, *War Rights on Land*, pp. 408-409; Merignhac, *Lois et Coutumes de la Guerre sur Terre*, sec. 106; Nys, *Droit International*, Vol. III, p. 429; Despagnet, *Cours de Droit International*, sec. 589; Bluntschli, *Droit Int. Cod.*, sec. 643 bis. The text of the above mentioned order may be found in the *Revue de Droit International et de Lég. Comp.*, Vol. II, p. 666; see the defense of this order, by Loening, *ibid.*, Vol. V, p. 77.

⁵ Edwards, *The Germans in France*, pp. 76, 211.

⁶ Edmonds and Oppenheim, *The Laws and Usages of War in the British Manual of Military Law* (ed. of 1914), p. 305.

⁷ Pradier-Fodéré, *Traité de Droit Int.*, Vol. VII, p. 281.

⁸ *Ibid.*, p. 279.

was forced to pay 10,000 francs to the families of two Prussian dragoons who were alleged to have been killed by *francs-tireurs*.⁹ Châtillon was fined 1,000,000 francs for the destruction of a bridge¹⁰; Etamps, 40,000 francs for the cutting of a telegraph wire¹¹; Orleans, 600,000 francs on account of the killing of a Prussian soldier by an unknown person during an altercation between himself and the soldier.¹² St. Germain was given the option of paying a fine of 100,000 francs or of being burned because three German dragoons had disappeared from the community.

In some instances impositions were levied which in form and pretext were fines, but which in reality were contributions in disguise. The enormity of the amounts and their disproportion to the offenses alleged would seem to leave no doubt as to this.¹³ Thus, the Department of the Seine was assessed 24,000,000 francs and Rouen was required to raise 6,500,000 francs within five days.¹⁴ The Departments of Aisne, Ardennes and Aube were compelled to pay 3,000,000 francs as a punishment for the action of the French in taking as prisoners of war the crews of captured German merchant vessels and for expelling Germans from France. The Departments of Meurthe, Meuse and Seine-et-Marne were assessed 2,755,253 francs on the same account.¹⁵ A contribution, which was intended as a punitive measure, was the levy in December, 1870, of 25 francs per capita on the inhabitants of all the occupied districts of France with the avowed purpose of breaking the resistance of the French people and of inducing them to sue for peace.¹⁶

⁹ Spaight, *op. cit.*, p. 409.

¹⁰ Bonfils, *op. cit.*, sec. 1219; Ferrand, *Des Réquisitions*, p. 239, and Guelle, *Précis des Lois de la Guerre*, Vol. II, p. 221. Guelle states that the village of Ham was fined 25,000 francs because the fortress was retaken from the Germans by a detachment of regular French troops. See also Latifi, *Effects of War on Private Property*, p. 34, and Rouard de Card, *La Guerre Continentale*, p. 178.

¹¹ Guelle, p. 221.

¹² Bonfils, *op. cit.*, sec. 1219, and Depambour, *L'Occupation en Temps de Guerre*, p. 119.

¹³ Compare Guelle, Vol. II, p. 221.

¹⁴ Depambour, p. 119, and Rouard de Card, p. 178.

¹⁵ Calvo, *op. cit.*, Vol. IV, sec. 2236. Bismarck considered the action of the French to be a violation of international law, but as the law then stood, the crews of merchant vessels were liable to be treated as prisoners. Compare Edmonds and Oppenheim, in the *British Manual*, sec. 459, note b.

¹⁶ Bonfils, sec. 1222, and Ferrand, *Des Réquisitions en Matière de Droit Int.*, p. 221. Other instances of fines imposed are mentioned by Andler in his brochure,

Punishments other than fines were laid in some instances. Thus, when the railroad bridge over the Moselle between Nancy and Toul was blown up, whether by civilian inhabitants or French troops is not clear, the town of Fontenoy was burned by the Germans.¹⁷ At Charmes the town casino was burned as a punishment for the act of the inhabitants in firing upon the escort of a convoy of prisoners.¹⁸

The German theory of collective responsibility was revived by Lord Roberts and General Kitchener in the South African War, when communities were held responsible and were punished not only by heavy fines but by wholesale burning of farms, the destruction of private houses and the imprisonment of the leading civil inhabitants, for damages committed upon railway and telegraph lines by "small parties of raiders." It is not clear whether the offenders were lawful belligerents or non-combatants; in the former case their acts were not violations of the laws of war and therefore they were not legally punishable.¹⁹ In any case the measures resorted to were extremely severe and of very doubtful expediency, as such measures always are, because they tend to drive the enemy to desperation, embitter the whole population and thus retard rather than hasten the termination of the war. Such measures were not resorted to during the Chino-Japanese, the Spanish-American, nor the Russo-Japanese Wars, and apparently not during the more recent Turco-Italian and Balkan Wars.

During the present war the Germans have, as already stated, extended the theory of collective responsibility and applied it on a larger scale and under a greater variety of forms than was ever done in any previous war.²⁰

Les Usages de la Guerre et la Doctrine de l'Etat-Major Allemand, p. 25, and by Saint Yves, *Les Responsabilités de l'Allemagne dans La Guerre de 1914*, pp. 383 ff.

¹⁷ Spaight, p. 122, and Guelle, p. 221. Pillet (*Le Droit de la Guerre*, p. 236) declares that the bridge was destroyed, not by civilians, but by French troops; consequently it was a legitimate act of warfare.

¹⁸ Edmonds and Oppenheim, *op. cit.*, p. 305, note b.

¹⁹ Spaight, p. 124; Bordwell, p. 150. See especially the proclamation of Lord Roberts of June 14, 1900, announcing that houses and farms in the vicinity of places where damage was done would be burned; and that of General Maxwell of June 15, 1900, declaring that in case telegraph wires were cut or railway bridges destroyed the farm nearest the place where the act was committed would be burned.

²⁰ With a view to establishing the liability of Belgian communes for damages

The following instances, the facts regarding which seem to be sufficiently established, illustrate fairly well the German theory and practice:

In November, 1914, the city of Brussels was fined 5,000,000 francs by General von Leutwitz for the act of a policeman in attacking a German officer during the course of a dispute between the two, and for facilitating the escape of a prisoner.²¹ In July, 1915, another fine of 5,000,000 francs was reported to have been imposed upon Brussels for the alleged destruction of a German Zeppelin by a British aviator at Eyre near Brussels.²²

According to a press despatch of November 8, 1914, from The Hague, the affair which led to the imposition of the first mentioned

done by the inhabitants and for determining the amounts for which they should be held responsible, the Governor-General of Belgium in August, 1914, revived and declared in force the old French law of 1795, which makes the communes responsible for damages caused by riots and public disorders therein. The claim of the Governor-General to do this was based on the fact that the law in question was enacted when what is now Belgium was a part of France and had never been repealed by the Belgian Parliament. The original purpose of the law of 1795, however, was to establish the responsibility of the communes for damages caused by riots and public disturbances (*attroupements*) in time of peace and not those caused by acts of individuals in time of war in territory occupied by the enemy. There is no analogy, therefore, between the responsibility contemplated by the French law and that which the Governor-General of Belgium sought to establish. Compare Pillet, *Le Droit de la Guerre*, p. 235. By a decree of July 3, 1915, the Governor-General created in each province a special tribunal charged with the enforcement of the earlier decree. The tribunals were empowered to examine witnesses, employ experts, conduct investigations and to fix the amount of the damages wrought, which amount was to be paid by the commune to the provincial treasurer within ten days, who was thereupon required to transmit the amount to the parties injured. Text in Huberich and Speyer, *German Legislation in Belgium*, 2d series, pp. 57-59. On the face of it, the primary purpose of this measure was to provide a means for indemnifying the Belgian population, but it is not improbable that it was also intended to provide machinery for punishing communes for acts of hostility committed by individuals against the authority of the occupying forces.

²¹ The notice imposing the fine was posted at Brussels, November 1, 1914. The text may be found in various collections of proclamations issued in Belgium, among others the Report of the Belgium Commission of Inquiry. The notice states that the policeman in question was sentenced to imprisonment for a term of five years and that "The city of Brussels, excluding suburbs, has been punished for the crime committed by its policeman De Ryckere against a German soldier, by an additional fine of five million francs."

²² The application of the principle of collective responsibility in this case seems so extraordinary that one is tempted to doubt the authenticity of the report.

fine grew out of the attempt of the German military authorities to prevent the sale of "contraband" newspapers. A German secret service agent, it appears, undertook to arrest certain Belgians for selling Dutch newspapers contrary to the regulations; the latter resisted arrest and were supported by the policeman in question who, it is alleged, attacked the German officer. The Brussels municipal council protested against the fine, among other reasons, because the military authorities had not notified the local news-dealers of the order prohibiting the sale of Dutch newspapers, and because the persons who resisted arrest did not know that the secret service agent was a German officer.

In July, 1915, Brussels was again fined 5,000,000 marks in consequence of a "patriotic demonstration" by the inhabitants on July 21st, the national holiday, the "moderate size of the fine imposed being due to the loyal coöperation of the municipal authorities in preserving order."²³ The mayor addressed a protest to the Governor-General, von Bissing, in which he denied the right of a military occupant to punish the civil population for manifesting their sentiments of patriotism on the occasion of the celebration of their national independence.²⁴

Early in 1916 Brussels was fined 500,000 marks, and the suburb

²³ Lieutenant-General Hut, German Governor of Brussels, in a letter to the mayor, stated that the municipal authorities had given their approval to the regulations prohibiting all public demonstrations, meetings, processions and display of flags on the fête day of July 21st, but that in spite of this agreement, late in the evening disturbances were created by the distribution of tracts urging the people to disregard the regulations. During the evening Cardinal Mercier drove through the streets, and his appearance led to demonstrations "which were contrary to the German regulations and which had the effect of inciting the people to rebellion or foolish deeds." "No occupying Power," said General Hut in his letter to the mayor, "would bear a similar challenge. I therefore proposed to the Governor-General to fine the community. The Governor accepted the proposal and imposed a fine of 5,000,000 marks. The Governor remarked: 'It is only in consideration of the loyal coöperation of the municipal authorities in preserving order that the fine laid is so moderate.'" Massart (Belgians under the German Eagle, p. 275) says the Germans even went to the length of announcing that the closing of stores on the national holiday would be regarded as a forbidden "demonstration," but this portion of the order they were unable to enforce in Brussels or elsewhere.

²⁴ The town of Lierre was fined 57,500 francs for a similar "demonstration" on the same day, the chief offense, it is alleged, being the raising of a Belgian tricolor on the top of an oak tree.

of Schaerbeek 50,000 marks, in consequence of the murder by an unknown person of a young Belgian in the latter commune on the night of January 6th.²⁵ Brussels was held partly responsible because the crime was alleged to have been committed with a revolver obtained in that city, notwithstanding the fact that the German authorities had, on January 1st, issued a proclamation requiring all persons to deliver up their fire arms and munitions at the city hall, and threatening with the death penalty those found with arms in their possession after a fixed date.²⁶ The proclamation also notified the inhabitants that communes in which such persons were found would be fined 10,000 marks for every offender taken therein.

Numerous towns and cities were fined for the alleged firing by *francs-tireurs* and civilians upon German troops and for other offenses against the occupying authorities. Thus Louvain was fined 20,000,000 francs in consequence of shots alleged to have been fired by civilians.²⁷

A levy of 60,000,000 francs was made upon the Province of Liège shortly after it fell under the occupation of the Germans, but it is not quite clear whether it was intended as a fine or a contribution.²⁸ Subsequently a levy of 10,000,000 francs was imposed on the city of Liège in consequence of the alleged firing of shots from private houses upon German troops. Mons was compelled to pay 100,000 francs for the firing by an unknown person upon a German soldier, and the town

²⁵ The murdered Belgian was said to have been the person who had furnished the German authorities with information which led to the arrest and execution of Miss Edith Cavell, an English nurse, on the charge of assisting English soldiers to escape from Belgium. He was, therefore, regarded by the Belgian people as a traitor and his murder was apparently brought about by a secret society which had sworn vengeance against Miss Cavell's betrayer.

²⁶ Compare the following from a proclamation, issued in October, 1915, by General Sauberweig:

"If, after October 25th, arms and ammunition are found in possession of any inhabitants those persons will be liable to the death penalty, or to hard labor for at least ten years, while the communities will be fined up to 10,000 francs for each case."

²⁷ The German White Book, *Die Völkerrechtswidriger Führung des Belgischen Volkskriege*, p. 241 says, however, that it was impossible to collect this fine.

²⁸ It is variously described in the press despatches as a "fine," a "contribution," and a "war levy." It makes little difference whether technically it was a fine or a contribution, for many of the "fines" imposed by the Germans were in fact "contributions" in disguise.

was threatened with another fine in case a certain Englishman should be found within its limits.²⁹ The town was threatened with another fine in case any inhabitant should be found within its limits with benzine or a motor cycle in his possession, and a similar threat to fine the Province of Hainaut for the same offense was made.³⁰ In June, 1917, Mons, according to the press dispatches, was again fined 500,000 francs because a Belgian paper published in Holland stated that Crown Prince Rupprecht of Bavaria was in Mons when the city was bombarded by Allied airmen.³⁰

Tournai is said to have been fined 3,000,000 francs for the killing of a Uhlan.³¹ Merris and La Gorgue were each fined 50,000 francs for the firing of shots at German troops; the village of Marson (population 300) 3000 francs, and the commune of Warnelon 10,000 francs for the same offense.³² The commune of Cortemarck was fined 5000 marks on the pretext that one of the inhabitants had committed espionage by making signals to the enemy.³³ In the case of Marson, the Germans promised "to burn only a part of the village in the event the fine was duly paid."

On January 16, 1915, the Belgian Legation at Washington issued a public statement charging the Germans with having imposed a fine of 10,000,000 francs on the city of Courtrai, not for the disobedience of the inhabitants, but for obeying the orders of the military commander.³⁴

²⁹ Massart, *Belgians under the German Eagle*, p. 147. Proclamation posted at Mons, November 6, 1914.

³⁰ Proclamation posted at Mons, Oct. 6, 1914, Massart, p. 147.

^{30a} *New York Times*, June 8, 1917, despatch from Amsterdam. Were there not clearly established instances of the imposition of fines by the Germans in other cases where the element of community guilt was totally lacking, one would be inclined to regard this dispatch as a joke.

³¹ *London Times*, September 25, 1914.

³² Ferrand *Des Réquisitions en Matière de Droit Int.* (1917), p. 415, and Morgan, *German Atrocities*, p. 85. Morgan asserts that these levies were not fines in reality, but "pure extortions levied on mere pretense."

³³ Text of the notice, in Massart, p. 153. The curé and the vicar of the commune were held "responsible for the members of the parish" and were punished by deportation to Germany.

³⁴ According to the Belgian version, the inhabitants had been ordered by two German officers shortly after the occupation of the city to deliver up their arms in the tower of Broel. Subsequently a new commander arrived who charged that the

For the cutting of a telephone wire by unknown persons at Arlon, the town was fined 100,000 francs and given four hours in which to raise the amount, in default of which 100 houses were to be pillaged. Before the sum was raised 47 houses are alleged to have been sacked.³⁵ The commune of Puers was fined 3000 francs for a similar offense. The local authorities, however, claimed that the wire had not been cut, but had given way through wear. Other towns fined on the charge that the telegraph or telephone systems "did not work properly" were Ghent, 100,000 marks; Ledebourg, 5000 marks; Destelbergen, 30,000 marks; Schellebelle, 50,000 marks; Sweveghem, 4900 marks; Winckel Sainte-Croix, 3000 marks; and Wachtebeke, 3000 marks.³⁶ Seraing was fined because a bomb had burst within the limits of the commune, and Eppenheim was punished (by a fine of 10,000 francs) on the charge that a peasant had fired a shot at a hare or a pigeon.³⁷

A fine of 20,000 marks was imposed on the town of Malines for the failure of the mayor to notify the military authorities of a journey which Cardinal Mercier had made in violation of the German regulations concerning the circulation of automobiles.³⁸ The same town was threatened with a fine in case the authorities did not furnish the Germans within 24 hours a list of the employés of the railway administration in order that they might be requisitioned for labor.³⁹

arms had been clandestinely deposited at the tower without instructions from the military authorities. The city was thereupon fined 10,000,000 francs. Von Mach (Germany's Point of View, p. 195) ridicules the Belgian explanation, and defends the imposition of the fine as a legitimate and humane punishment.

³⁵ Reports on Violations of the Laws and Customs of War in Belgium, preface by J. Van Den Heuvel, p. xxvi; also p. 58; see also Saint Yves, *Les Responsabilités de l'Allemagne dans la Guerre de 1914*, p. 385.

³⁶ Massart, p. 146, quoting the *Nieuwe Rotterdamsche Courant* of January 30, 1915.

³⁷ Massart, pp. 147-148. The Belgian accounts charge that the shot was in fact fired by a German soldier while walking in the country. Hostages were taken to insure the payment of the fine, but as there was no money in the communal treasury, the hostages were subsequently released and apparently the fine was remitted.

³⁸ Annex IV to Cardinal Mercier's address to the Cardinals, Archbishops and Bishops of Germany, Bavaria and Austria-Hungary, published in a brochure entitled "An Appeal to Truth," p. 26.

³⁹ The mayor replied that the local authorities, not being charged with the administration of the railways, did not possess the information demanded.

Antwerp is said to have been fined 25,000 francs because an unknown person altered the letters in a public notice posted by the Germans announcing the capture of 52,000 Russians and 400 guns, so as to make it read "52,000 sparrows and 400 nuns."⁴⁰

The village of Grenbergen was assessed 5000 francs because an inhabitant allowed his pigeons to fly in violation of the military regulations.⁴¹

On August 22, 1914, General von Nieber imposed a fine of 3,000,000 francs on the town of Wavre (population 8500) for the "unqualified behavior, contrary to the law of nations and the usages of war, of the inhabitants in making a surprise attack on the German troops." The town was given a week in which to raise the amount. In a letter of August 27, General von Nieber informed the mayor as follows: "I draw the attention of the town to the fact that in no case can it count on further delay, as the civil population has put itself outside the law of nations by firing on the German troops. The city will be burned and destroyed if the fine is not paid in due time, without regard for any one; the innocent will suffer with the guilty."⁴² The Belgian accounts state that in consequence of the inability of the town to raise the amount a large number of houses were burnt.⁴³ Professor Waxweiler affirms that the civil population took no part in the hostilities and that a medical inquiry established the fact that the German soldier who had been wounded during the course of the affair received his wound from a German bullet.⁴⁴

Lessines is alleged to have been subjected to a "heavy fine" because the women of the town declined to do military work for the Germans. Other towns were fined or otherwise punished for the refusal of the inhabitants to perform what the Belgians regarded as military work or for attempting to dissuade their fellow citizens from performing

⁴⁰ Massart, p. 148.

⁴¹ *Ibid.*, p. 147.

⁴² Text in the Belgian Reports on Violations, etc., p. 37. See also Dampierre, *l'Allemagne et le Droit des Gens*, p. 148, and Saint Yves, *op. cit.*, p. 385. Some of the accounts say the fine was imposed by General von Bülow.

⁴³ Facts about Belgium, p. 7. Grasshoff, a German writer (*The Tragedy of Belgium*, p. 173), alleges, however, that the threat was not executed and that the city was spared from burning.

⁴⁴ Belgium, Neutral and Loyal, p. 281.

such labor.⁴⁵ Collective fines (10,000 francs in each case) were also threatened for the failure of the owners of horses to bring in their animals at the direction of German agents who were sent to Belgium to requisition horses for transportation to Germany. Besides, an individual fine of 500 francs was to be imposed upon each owner who refused to comply with the order.⁴⁶

During the autumn of 1916 many towns and communes were fined in consequence of the refusal of the civil authorities to furnish the Germans with lists of the "unemployed" whom the military authorities were then deporting in large numbers to Germany for compulsory labor. Thus, Bruges was threatened with a fine of 150,000 marks for each day's delay in the furnishing of such a list. The authorities refused to furnish the list, and the fine was imposed and paid.⁴⁷ Tournai, which had already in 1914 been fined 3,000,000 francs for the killing of a German Uhlan, was now assessed 200,000 marks for the refusal of the civil authorities to furnish the Germans with a list of all the male inhabitants of the town, and a further fine of 20,000 marks was threatened for each day's delay in the furnishing of the information demanded.⁴⁸

⁴⁵ Some instances are mentioned in my article in the January, 1917, number of this JOURNAL, pp. 103 ff. The Belgian Government furnished a correspondent of the *New York Times* a facsimile copy of the following military notice addressed to the population of the village of Ledeborg, near Ghent:

Ghent, 16th December, 1915.

To the Mayor of Ledeborg:

The following is Paragraph 4 of the regulations dated 12th October, 1915:

It is forbidden to the inhabitants of Ledeborg parish to use the public streets between 7 P.M. and 8 A.M. from 17th December till 24th December, 1915, inclusive. You are directed to inform the public immediately of the present regulation.

Furthermore, you are informed herewith that police measures and fines will follow in case the workmen requisitioned for the railway workshops at Ledeborg persist in their refusal to resume work on account of the German military administration.

Commandant d'Etape, Von Wick.

⁴⁶ See my article in the January, 1917, number of this JOURNAL, p. 90; also Ferrand, *Des Réquisitions*, p. 437.

⁴⁷ *London Times* (weekly ed.), Nov. 3, 1916.

⁴⁸ *New York Times*, November 18, 1916. Major-General Hoppfer, who imposed the fine, replied in a letter of October 23d to a resolution of the municipal council declining to furnish the list, as follows: "The fact that the municipal

In some instances confiscations under the guise of fines appear to have been imposed on private individuals of wealth. Thus Baron Lambert de Rothschild is said to have been "mulcted" for 10,000,000 francs, and M. Solvay, the well-known Belgian manufacturer, was compelled to pay 30,000,000 francs.⁴⁹

In the occupied districts of France the same policy was followed by the Germans, and many towns and communes were fined for acts alleged to have been committed by the inhabitants against the authority of the occupying forces. Thus, in August, 1914, the commune of Lunéville was fined 650,000 francs for an alleged attack by certain of the inhabitants against the German troops.⁵⁰ The French authorities, however, council allows itself to oppose the orders of the military authorities in occupied territory constitutes an act of arrogance without precedence and is an absolute misunderstanding of the situation arising from the state of war.

"The state of affairs is clearly and simply this: The military authority commands and the municipality has to obey. If it fails to do this, it will have to support the heavy consequences which I have already pointed out in my previous explanation.

"The commander of the army has imposed on the town for its refusal to supply the required lists a fine of 200,000 marks, which has to be paid within the next six days, and he further adds that until the required lists have been put at his disposal the sum of 20,000 marks will have to be paid for every day of delay. This will hold good until December 31."

⁴⁹ Sarolea, *How Belgium Saved Europe*, pp. 140-1. Sarolea refers to these exactions as "fines" without stating what the offenses were for which they were laid. Apparently they were nothing more than acts of confiscation.

⁵⁰ The following notice concerning the fine was posted by the German authorities throughout the commune:

"On the 25th August, 1914, the inhabitants of Lunéville made an attack by ambuscade against the German columns and transports. On the same day the inhabitants fired on hospital buildings marked with the Red Cross. Further, shots were fired on the German wounded and the military hospital containing a German ambulance. On account of these acts of hostility a contribution of 650,000 francs is imposed on the commune of Lunéville. The mayor is ordered to pay this sum — 50,000 francs in silver and the remainder in gold — on the 6th of September at 9 o'clock in the morning to the representative of the German military authority. No protest will be considered. No extension of time will be granted. If the commune does not punctually obey the order to pay 650,000 francs, all the goods which are available will be seized. In case payment is not made, domiciliary searches will take place and all the inhabitants will be searched. Anyone who shall have deliberately hidden money or shall have attempted to hide his goods from the seizure of the military authorities, or who seeks to leave the town, will be shot. The mayor and hostages taken by the military authorities will be made responsible for the

emphatically denied the truth of the charge, and accused the Germans not only of having themselves fired the shots complained of, but with having also massacred 18 inhabitants of the town and burned 70 houses.

Upon the occupation of Rheims, the Germans levied an "exorbitant indemnity" on the city, but it is not clear whether it was intended as a fine or a contribution. The amount was finally cut down to 150,000 francs in gold and a quantity of supplies of the value of 800,000 francs. Hostages were taken to insure the payment within four days of the sum required.⁵¹

Lille was fined 500,000 francs because the inhabitants made a demonstration of sympathy for a detachment of French prisoners who were being escorted through the streets by a German military guard. The city was allowed one week in which to raise the amount of the fine.⁵²

The town of Epernay was fined 176,550 francs in September, 1914, for not having delivered within the time specified certain supplies which the German military authorities had requisitioned for the use of their troops. The notice of the fine was accompanied by a threat to "take the most rigorous proceedings against the population itself and to conduct forcible perquisitions in the houses of the inhabitants" in case the amount was not paid on the following day. The mayor protested against the fine on the ground that certain of the supplies requisitioned (notably 12,000 kilogrammes of salted bacon) were not to be found in the town although he had used all his endeavors to procure them. The German authorities could not, however, be induced to exact execution of the above order. The mayor is ordered to publish these directions to the commune at once."

Hénaménil. 3d September, 1914.

Commander-in-Chief, Von FASBENDER.

The text of this notice may be found in the Report of the French Official Commission of Inquiry on Violations of International Law in French Territory occupied by the Enemy, *Journal Officiel*, January 8, 1915. A facsimile reproduction in French may be found in a collection entitled *Scraps of Paper: German Proclamations in Belgium and France* (p. 11), published by Hodder and Stoughton, London, 1917; in Dampierre, *l'Allemagne et le Droit des Gens*, p. 149; and in various other publications.

⁵¹ Wood, *The Note Book of an Attaché*, p. 168.

⁵² Press dispatches of March 12, 1915. The Department of the Nord had already been subjected to a contribution of 15,000,000 francs, in addition to a monthly contribution of 2,000,000 francs. About half of the burden fell upon Lille. Lille, *Sous le Joug Allemand* (Paris, 1916), p. 4.

relinquish the fine or reduce the amount, and an appeal was made by the mayor to the inhabitants to raise the sum demanded.⁵³ The amount was collected and turned over to the German authorities at 5 o'clock on the day fixed.

Erbéville and other places were fined on the charge that shots were fired by civilians at German soldiers.⁵⁴

A curious application of the German theory of collective responsibility was the reported imposition of a fine on Lens in consequence of the bombardment of the town by the Entente Allies during its occupation by the Germans. It appears from the news dispatches that the punishment was based on the assumption that certain of the inhabitants must have been in communication with the enemies of Germany and induced or invited the bombardment. Six shells fell on the railroad station, for each of which a fine of 3750 francs was imposed.

Punishments other than pecuniary fines were as in Belgium laid upon French towns in various instances.⁵⁵

In other territories occupied by the Germans the policy of collective responsibility and punishment was applied as in Belgium and France. Thus, a fine of 50,000 rubles (about \$25,000) was imposed on the inhabitants of the Russian town of Windau, the amount being worked out by the inhabitants on the roads, bridges and farms. Vilna was fined 75,000 marks in consequence of a fire alleged to have been started by one of the inhabitants. Soon after their occupation of Russian Poland, the Germans, in retaliation for the alleged destruction by Russian troops of private property in East Prussia, announced that Polish towns occupied by them would be heavily fined, and for every village burned by the Russians in German territory and for each estate destroyed, three villages or estates in Russian territory would be sacrificed to the flames.

⁵³ Facsimile reproduction of the order in *Scraps of Paper*, etc., p. 23; see also Matot, *Rheims et la Marne, Almanach de la Guerre*, p. 169.

⁵⁴ Saint Yves, *op. cit.*, p. 387.

⁵⁵ Thus the entire population of Roulers was compelled to remain indoors from 2 P.M. until 8 P.M. every day for three weeks because one of the inhabitants was found guilty of giving food to Russian prisoners employed by the Germans at work in the vicinity of the town. *London Times* (weekly ed.), June 23, 1916, quoting from the *Amsterdam Telegraf*.

Upon their occupation of Bucharest in December, 1916, a heavy pecuniary imposition was levied upon the Roumanian capital, and a similar exaction amounting to 50,000,000 francs is said to have been laid on the town of Craiova.⁵⁶ In June, 1917, a fine of 250,000,000 francs was imposed in the occupied territory of Roumania.^{56a}

It is probably safe to assume that the charges against the Germans for levying exorbitant fines upon communities, like many other charges made against them, have been exaggerated, and that in some instances where pecuniary exactions were actually levied they were not intended as punitive measures, but were contributions levied ostensibly, at any rate, for the "needs of the occupying troops."⁵⁷ Nevertheless, when reasonable allowance has been made for exaggeration and errors of statement, there remains sufficient evidence of a reliable character to warrant the conclusion that the charges are in the main true, and that a policy of pecuniary repression has been carried out on so large a scale as to afford some basis for the assertion that it partook of the character of spoliation.

We may now examine in the light of the international conventions, the opinions of the text writers and the principles of the criminal law the question of the legality of the German policy. The great majority of American, English and French writers on international law have condemned as arbitrary and contrary to the elementary principles of justice the theory of collective responsibility as it was applied by the Germans in many instances during the war of 1870-71, particularly where it was applied to districts other than those in which the offense was committed, where the amount of the fine was out of all proportion

⁵⁶ London *Times* (weekly ed.), Dec. 15, 1916. These levies were variously described in the press dispatches as "contributions," "war levies" and "fines." It is impossible to determine their technical character, nor is this important, for the reason that the Germans do not seem to have observed strictly the distinction between fines and contributions.

^{56a} New York *Times*, June 26, 1917.

⁵⁷ Von Mach ventures the explanation that many of the so-called "indemnities" levied by the Germans were nothing more than taxes imposed for meeting the expenses of the civil administration. *Germany's Point of View*, p. 194. In this article I have made a conscientious endeavor to avoid confusing fines with contributions and taxes, and with one or two exceptions where there is doubt as to the exact character of the imposition, I have dealt only with fines.

to the gravity of the offense, where the acts complained of were committed not by the civil population but by the regular troops of the enemy, as appears to have sometimes been the case, and where the fines levied were imposed for the psychological purpose of inducing the population to cease their resistance and sue for peace.⁵⁸

Even a few German writers, such as Bluntschli,⁵⁹ Geffcken,⁶⁰ Loening⁶¹ and apparently Albert Zorn, admit that in some instances the

⁵⁸ See, for example, Bordwell, *Law of War*, p. 317; Lawrence, *Principles*, p. 448; Spaight, *op. cit.*, p. 408; Westlake, *International Law*, Vol. II, p. 96; Bonfils, *op. cit.*, sec. 1219; Despagnet, *op. cit.*, sec. 589; Ferrand, *Des Réquisitions*, pp. 239 ff.; Feraud-Giraud, *Des Réquisitions Militaires*, p. 17; Merignhac, *Les Lois et Coutumes*, sec. 106; Nys, *Droit Int.*, Vol. III, p. 429; Guelle, *Précis*, Vol. II, p. 219; Latifi, *op. cit.*, p. 34; Pillet, *Le Droit de la Guerre*, pp. 234 ff. See also Calvo, *op. cit.*, Vol. IV, sec. 2172, and G. F. DeMartens, *Traité*, Vol. III, p. 265. Rolin Jaequemyns, a Belgian jurist, defends in general the German policy of 1870-71, although he condemns as unjustifiable the punishment of communes other than those in which offenses were committed. See the *Revue de Droit Int. et de Lég. Comp.*, Vol. II, pp. 666 ff. and Vol. III, pp. 311 ff. ⁵⁹ *Droit Int. Cod.* (Fr. trans. by Lardy), sec. 643 bis.

⁶⁰ See his note (no. 7) to sec. 126 of Heffter where he says it must be admitted that the Germans went beyond the necessities of the war in holding responsible distant communes from which the offender originally came. Their action in compelling the municipal authorities to furnish information to the nearest military commander concerning infractions and in punishing communes for giving shelter to offenders, Geffcken says was unjustifiable, since the occupying belligerent has no right to require the civil authorities to act as agents for the commanders of the invading army.

⁶¹ See his article *l'Administration du Gouvernement-Général de l'Alsace Durant la Guerre de 1870-71* in the *Revue de Droit Int. et de Lég. Comp.*, Vol. V (1873), p. 77. Loening defends the action of the Germans in imposing a fine equal to the amount of the local land tax on districts in which offenses were committed against the safety of the German army by persons not belonging to the French army. The effect he says was "remarkable" and was the means of preventing many wrongs. "It therefore marked a great progress in the penal law of war." He also defends the 25 franc per capita levy for the purpose of breaking the resistance of the French and bringing pressure on them to sue for peace. But the Germans went too far, he says, when they extended the principle of collective responsibility to communes from which the offenders came, because in most cases there was no relation between the offense and the commune punished. The commune punished in such cases, he very properly adds, possessed no authority over its inhabitants such as the German theory assumed, and consequently the punishment fell upon persons who not only took no part in the acts committed but who were powerless to prevent them (p. 78). Loening asserts, however, that there was no reported instance in fact in which such a commune was fined; the German order was, therefore, only an unexecuted threat, and as matters turned out the Germans cannot be reproached.

German commanders pushed the theory of collective responsibility too far. The majority of German writers, however, have attempted to justify without exception the punitive measures resorted to by the German commanders in 1870-71. Leuder finds a justification in the embittered character which the war took on in its later stages and in the determined resistance of the French people after it had become evident that their success was hopeless,⁶² and this defense is relied upon by the *Kriegsbrauch im Landkriege*, which adds that experience shows pecuniary penalties to be the most effective means of insuring the obedience of the civil population.⁶³ Regarding the charge that the amount of the fines levied was excessive in many instances, Leuder remarks that the promptness with which they were paid is evidence enough that they were "in truth not too exorbitant."⁶⁴ He even goes to the length of holding that communities may be fined for the continued persistence of the inhabitants in keeping up a struggle in which there is no hope of success (*durch frivol fortgesetzte Kriege*).⁶⁵ The 25 franc per capita levy for breaking the resistance of the French was therefore a justifiable measure.⁶⁶

Finally, Leuder, Loening and the *Kriegsbrauch im Landkriege* defend the policy of pecuniary penalties as applied in 1870-71 on the ground that it was successful in deterring the civil population from persisting in their resistance to the authority of the enemy — a very doubtful justification, because if the test of the legitimacy of an instrument or a measure be merely its success few instrumentalities or methods would be unlawful. Strupp likewise defends the theory of collective responsibility in its extreme form. "The whole town," he says, "is guilty of the acts of every one of its inhabitants."⁶⁷ But Bluntschli,

⁶² Holtzendorff, *Handbuch des Völkerrechts*, Vol. IV, p. 508; see also sec. 112, note 14 (p. 473).

⁶³ Morgan, *The War Book of the German General Staff*, p. 178. Both Leuder and the general staff assert that the fines levied by the Germans were small in comparison with the contributions extorted by Napoleon. ⁶⁴ *Ibid.*, p. 509.

⁶⁵ *Ibid.*, p. 505. See Westlake's comment on this doctrine in his *Collected Papers*, p. 251.

⁶⁶ *Ibid.*, p. 510. Lammasch at the First Hague Conference likewise defended the theory that money contributions may be levied for the purpose of exercising pressure upon the inhabitants to sue for peace. Ferrand, *Des Réquisitions*, p. 229.

⁶⁷ *Das Internationale Landkriegsrecht* (1914), p. 248. Compare also the fol-

very properly, it would seem, limits the right of collective punishment to communes and individuals who facilitate the commission of crimes against the authority of the occupying belligerent, or who fail to prevent them when it is possible to do so.⁶⁸ Von Liszt also remarks that it is not permissible to impose collective punishments (except by way of reprisal) for individual acts unless the totality (*gesamtheit*) of the population is responsible.⁶⁹

Albert Zorn, another German writer, although defending in general the German measures of 1870-71 as "juristically correct and therefore unconditionally legal," nevertheless lays down the proposition that a community may not be punished for the act of an individual who injures a railway, a bridge or a telegraph line if it can prove that it has done all in its power to prevent the act.⁷⁰ Wehberg, to quote one more highly respected German authority, defends in general the principle of community responsibility, but he limits it to cases in which the inhabitants are actually responsible, even if only passively.⁷¹

The right of a military occupant to the unqualified obedience of the inhabitants over whom his authority has been effectively established is recognized by all writers on international law, and it is clearly affirmed by the Hague Convention respecting the laws and customs of war. The principle has also long been recognized, and it is affirmed inferentially by the above mentioned Hague Convention (Article 50), that he may hold the entire population responsible under certain con-

lowing remarks by Herr Walter Bloem in the *Kölnische Zeitung* of July 10, 1915: "The innocent must suffer with the guilty, or, if the latter cannot be discovered, the innocent must pay the penalty for the guilty, not because they have committed a crime, but to prevent the commission of crimes. The burning of a village, the execution of hostages, the decimation of the inhabitants of a commune who have taken up arms against the advancing troops, are less acts of vengeance than signs of warning to the parts of the territory not yet occupied."

⁶⁸ *Op. cit.*, sec. 643 bis.

⁶⁹ *Das Völkerrecht*, p. 340.

⁷⁰ *Das Kriegerrecht zu Land*, p. 242. Zorn, like Loening, apparently disapproves the punishment of communes other than those in which the offense was actually committed.

⁷¹ Capture in War (English translation by Robertson), p. 48. Meurer holds substantially the same opinion. A community, he says, cannot be punished for the act of individuals unless the entire population is responsible either in an active or passive sense. *Das Kriegerrecht der Zweiter Haager Konferenz*, p. 286.

ditions for acts committed against his authority⁷² by persons not belonging to the armed forces of the enemy and may punish the community by fines or otherwise for such acts. This right, however, is not unlimited. It is subject to certain well-recognized limitations and restrictions, and can not be exercised arbitrarily at the will of the commander. Article 50 of the Hague Convention declares that "no general penalty (*peine*), pecuniary or otherwise, shall be inflicted upon the population on account of acts of individuals for which they can not be regarded as jointly and severally responsible" (*solidairement responsables*).⁷³ Unfortunately the convention does not undertake to define the elements of responsibility, and military commanders therefore are left to judge for themselves in each specific case whether the act is or is not one for which the community could be properly held responsible. But the determination of the question of responsibility is obviously governed by certain well-established principles, one of which, it would seem, is that the community is not really responsible unless the population as a whole is a party to the offense, either actively or passively. If the act has been committed by isolated individuals in remote parts of the community without the knowledge or approval of the public authorities, or of the population, and which therefore the authorities could not have prevented, it would seem unreasonable and contrary to one of the oldest rules of the criminal law to impute guilt or responsibility to the whole population.⁷⁴ Likewise, if the authorities have

⁷² There is a difference of opinion as to whether the right of punishment is limited to offenses in violation of the laws and customs of war. Bordwell (p. 316) thinks it is so limited, but Spaight (p. 408) holds otherwise and affirms that it extends to all acts forbidden by the occupying authorities, whether they are infractions of war law or not.

⁷³ The word *amende*, employed in the Brussels Declaration, was rejected by the Hague Conference for the term *peine*, on the ground that the use of the former term involved a confusion of ideas of the criminal law with those of international law. See Albert Zorn, *op. cit.*, p. 240, and Meurer, *op. cit.*, p. 287. The change, however, has been criticized by some writers because the word *amende*, it is said, has a clear and definite meaning in international law. Compare Pont, *Les Réquisitions*, p. 92, and Merignhac, *Les Lois et Coutumes de la Guerre sur Terre*, p. 290.

⁷⁴ Commenting on Article 50, Lawrence (*Principles of International Law*, p. 447) remarks that it allows inferentially pecuniary penalties upon communities when the responsibility can be brought home. "If a detachment occupying a village," he says, "were slaughtered in the night while asleep, few would argue that the com-

exercised reasonable diligence to prevent the act and if they have exerted themselves to discover and punish the actual perpetrators, it hardly seems reasonable or just to say that the community is really responsible. To so hold is to insist that the public authorities are obliged to guarantee the perfect enforcement of the law, something which no community has ever in fact been able to do.

Nys remarks that collective responsibility exists only when the offense is imputable to all the inhabitants, as in the case of public injuries to the occupying force, manifestations of revolt and the like, or when the population by its attitude and will opposes an investigation.⁷⁵ Nys even contends that community fines may not be justly levied for the acts of a few isolated individuals. Such fines, he says, may be imposed only where the whole population is guilty and this guilt must be proven by the military authorities. He repudiates Loening's view that no obligation rests upon the military authorities to establish the guilt of the inhabitants, and also the doctrine of Loening, Leuder and others that the effectiveness of pecuniary punishment in preventing a repetition of the acts is a sufficient justification for the resort to collective penalties.⁷⁶ The purpose of Article 50, as Spaight

munity had no collective responsibility if a conspiracy of silence should baffle all attempts to discover the real perpetrators. On the other hand, if a train were derailed in the night while passing through a wild ravine far from human habitation, it would be wrong to hold that the population for miles around could have known of the deed and have assisted in it directly or indirectly."

⁷⁵ *Le Droit International*, Vol. III, p. 429. Compare also Brenet, *La France et l'Allemagne devant le Droit International pendant leurs Operations de la Guerre 1870-71*, p. 197, and Westlake (*op. cit.*, Vol. II, p. 106), who remarks that no fine is justifiable except where the responsibility can "justly be imputed to the inhabitants." Compare also Rolin's report on the subject at the First Hague Conference, where it was said: "that strictly individual acts could never be followed by collective repression in the form of a special war levy, and it becomes necessary that any repression, directed against the community, should be founded upon the more or less passive responsibility of that community. . . . The rule holds good not only in respect of fines, but for all penalties, pecuniary or otherwise, which it may be proposed to inflict upon the population as a whole."

⁷⁶ See his article on *Contributions et Réquisitions* in the *Revue de Droit Int. et de Lég. Comp.*, Vol. 38 (1906), p. 430. Compare also Merignhac (*op. cit.*, p. 282), who contends that contributions under the form of fines can be levied only on offenders and their accomplices, and that they are illegal when they fall upon innocent persons, whatever the motive for which they are levied.

remarks, was to confine collective punishment to such offenses as the community has either committed or has allowed to be committed.⁷⁷ Bonfils interprets the meaning of the article in a similar sense. A fine, he says, must be in its *quantum* proportionate to the gravity of the offense; it must bear only upon the offender and his accomplices; it is iniquitous when it falls upon the innocent who were not able to foresee the act, nor to prevent it nor to discover the offender.⁷⁸

If, in the main, the principles thus laid down regarding the nature and limits of collective responsibility be admitted as sound, it is difficult to justify many of the impositions levied by German military commanders during the present war. Again and again they have imposed fines which would seem to be out of proportion to the gravity of the offenses alleged, and in some cases quite beyond the ability of the impoverished inhabitants to pay. It has been asserted that this was true of the levy of 60,000,000 francs on Liège (it matters little whether it was technically a contribution or a fine) — a sum which amounted to about 300 francs per capita of the population; of the levy of 50,000,000 francs on Craiova, a town of only 52,000 inhabitants; of the fine of 10,000,000 francs on Courtrai; of the 100,000 franc fine on Mons; of the fine of 3,000,000 francs on Tournai; of the fine of 3,000,000 francs on the village of Wavre; and various others. In a number of instances it must also be remembered that these impositions were in addition to other heavy exactions in the form of requisitions, contributions and tax levies. Sometimes the offenses alleged were inconsequential acts committed by isolated individuals and involving no military injury or evidence of organized hostility to the authority of the occupying forces. Some of them, indeed, were so obviously mere pretexts that the exactions imposed were, as has been said, nothing more than contributions under the guise of fines. Some writers hold, and very properly, that such impositions do not differ from pillage, except in name, and are therefore forbidden by international law.⁷⁹

⁷⁷ *Op. cit.*, p. 408.

⁷⁸ *Op. cit.*, sec. 1218. To the same effect see also Despagnet, *op. cit.*, secs. 587-588; Feraud-Giraud, *op. cit.*, p. 17, and Bordwell, *op. cit.*, p. 317, who remarks that collective punishment is permissible only when the community could and should have prevented the act.

⁷⁹ Compare Latifi, *Effects of War on Property*, p. 34, and Bluntschli, *Droit Cod.*, sec. 654.

In other cases the fines imposed can be justified only on a theory of collective responsibility which is rejected by the great majority of writers and which hardly seems in accord with reason or justice. Such a case was the fine of 5,000,000 francs on Brussels for the act of a police constable. The affair was one of which the population had no knowledge; they were neither active nor passive accomplices; nor was the act one which the authorities could have prevented, because they could not have foreseen it. It was an isolated individual offense and the offender was promptly arrested by the German authorities and punished by a term of imprisonment. It is difficult to understand the process of reasoning by which responsibility for an act of this kind could be imputed to the whole population. The fine was therefore nothing more than a contribution in disguise and involved no question of community responsibility.

Likewise, it is difficult to justify the second fine of 5,000,000 francs imposed on Brussels for the destruction of a Zeppelin. If the act was committed by a person belonging to the Belgian military forces, it was a lawful belligerent act for which the community was not liable to punishment; if it was done by a civilian, responsibility could not be imputed to the whole population, unless it was established that they were accomplices, which was probably not the case. In any event, the amount of the fine in both cases would seem to have been out of proportion to the gravity of the offense. The legality of the third fine of 5,000,000 francs laid on Brussels in consequence of the popular demonstration on the national holiday has been denied by the Belgian writers on the ground that a military occupant has no lawful right to repress by huge fines the manifestation by the inhabitants of their patriotic sentiments. It can hardly be contended, however, that if acts of this kind amount in fact to open manifestations of hostility toward the occupying Power, or if they are accompanied by public disorders, they may not be repressed or punished by means of fines. On the other hand, if as the Belgians allege to have been true in this case, the demonstrations were peaceable, and consisted merely of processions and the carrying of flags and that no manifestations of hostility took place, the imposition of the fine is less defensible, if it can be defended at all. Certainly, the imposition of a heavy fine on the town of Lierre for the

hoisting of the Belgian flag on a tree, if as the Belgians allege, the act was unaccompanied by manifestations of hostility or the spirit of revolt, strikes one as being a species of petty tyranny of the same kind as the act of the Federal commander who at Natchez in 1864 banished a local preacher for refusing to pray for the President of the United States.⁸⁰ The same judgment may be passed upon the act of the German commander who fined the city of Lille for the demonstrations of sympathy by some of the inhabitants for their unhappy fellow countrymen who were being escorted as prisoners through the streets. No acts of hostility were charged, no disorders appear to have been committed and no injury was done to the authority of the occupying forces.

The 500,000 franc fine levied on Brussels in consequence of the crime of murder by an unknown person in the suburb of Schaerbeek — this on the assumption that the weapon used had been procured in Brussels where the possession of firearms by the inhabitants had been forbidden by the military authorities — certainly involved a wide extension of the theory of collective responsibility. The local civil authorities had issued a proclamation urging the people to bring in their firearms and deposit them at the city hall and warning them of the severe penalties to which they were liable in case of non-compliance with the orders of the military authorities. If the civil authorities did all in their power to insure compliance with the German military regulations and also exerted themselves to discover the offender, as they claim to have done, it may be seriously doubted whether under any reasonable or just interpretation of the rule as to collective responsibility either guilt or responsibility could be imputed to the whole population. In any case, one is tempted to inquire why the responsibility for enforcing the orders of a military occupant should be placed on the civil authorities. The Hague Convention in fact imposes upon the occupying authority the duty of maintaining order; his authority in the occupied district is supreme; he has full control of the local administrative and judicial machinery; he may alter the criminal law and increase its severity in order to repress acts against his authority; he may establish special tribunals to enforce the law; and he has at his disposal his own armed forces. In view of these facts, it is a fair question to

⁸⁰ As to the facts of this case see Garner, *Reconstruction in Mississippi*, p. 37.

raise whether he has any legal or moral right to shift the responsibility for the enforcement of his orders to the shoulders of the civil authorities and hold them responsible for infractions which neither he nor they can prevent.

The imposition by the German officers in numerous instances of fines for the acts of unknown individuals in cutting telegraph and telephone wires, for firing upon German troops, for committing injury to bridges and lines of communications, and for other similar acts, would seem to be defensible only on the assumption that the mass of the population were accomplices, or at least approved the acts, and that the civil authorities could have prevented them had they desired to do so—an assumption which in the majority of cases was probably unwarranted.

The fine levied on Malines for the neglect of the mayor to notify the military authorities of Cardinal Mercier's journey in violation of the traffic regulations, seems to have been based on a curious interpretation of the theory of collective responsibility, and it is difficult to understand the reasoning by which the responsibility for His Eminence's conduct was imputed to the entire population. If any one, other than the Cardinal himself, was responsible, it was the mayor, and it would seem that either he or the Cardinal and they alone were the proper persons to punish.

The same thing may be said of the punishment of various towns and cities for the refusal of the municipal authorities to furnish the Germans with the names of unemployed persons and with lists of the local railway employees. It was they and not the population who refused to comply with the orders of the occupying belligerent, and it would seem that they were the proper persons to punish. The imposition of collective fines in these and other similar cases cannot be justified on any reasonable theory of community responsibility; they were in fact nothing more than contributions levied under the pretext of punitive measures and for the enrichment of the military occupant. The fining of Epernay for the inability of the civil authorities to comply with the demand of the military authorities for a quantity of salted bacon, if the assertion of the civil authorities be true, that no such supplies were available in the town, was wholly indefensible; if the facts were otherwise, the punishment was of course a justifiable measure.

Both the Belgian and French authorities charge the Germans with imposing community fines in various instances for acts which were committed, not by the civil population, but by persons belonging to the regular armed forces and which were therefore legitimate acts of war for which the community was not liable to punishment. It is impossible to establish the truth of this charge, although there is good reason for believing that the Germans, as in 1870-71, went too far in treating injuries to their communications and other similar acts when done by detached bodies of troops as the acts of *francs-tireurs* and, therefore, not permissible by the laws of war. There can be little doubt that the German *franc-tireur* doctrine has been over-exploited and too often invoked as a justification for severities against the civil population for acts which were committed by persons belonging to the regularly organized armed forces.

On the whole, the evidence regarding German practice in respect to the imposition of pecuniary penalties on the civil population of occupied districts during the present war justifies the conclusion that their policy was based on a theory of collective responsibility which is neither in accord with the well established principles of modern criminal law nor with the interpretation of Article 50 of the Hague Convention which has been given it by the great majority of recent writers on international law, including even many of those of German nationality. Unfortunately, the theory of collective responsibility, even when applied in its mildest form, necessarily involves the punishment of innocent persons, and for this reason it ought never be resorted to when other more just measures would accomplish the same end, and in no case unless an active or passive responsibility can really be imputed to the mass of the population, or where the civil authorities have failed to exercise reasonable diligence to prevent infractions or to discover and punish the actual offender in case they have been unable to prevent the offenses. Some writers hold that collective punishments ought never be resorted to except as a measure of reprisal, while others, like Bonfils and G. F. de Martens, condemn the whole theory and express the hope that it will ultimately disappear entirely from warfare.⁸¹

⁸¹ Bonfils, *Droit Int.*, pub. sec. 1224, and G. F. de Martens, *Traité de Droit Int.*, Vol. III, p. 265. Compare also Rouard de Card, p. 178.

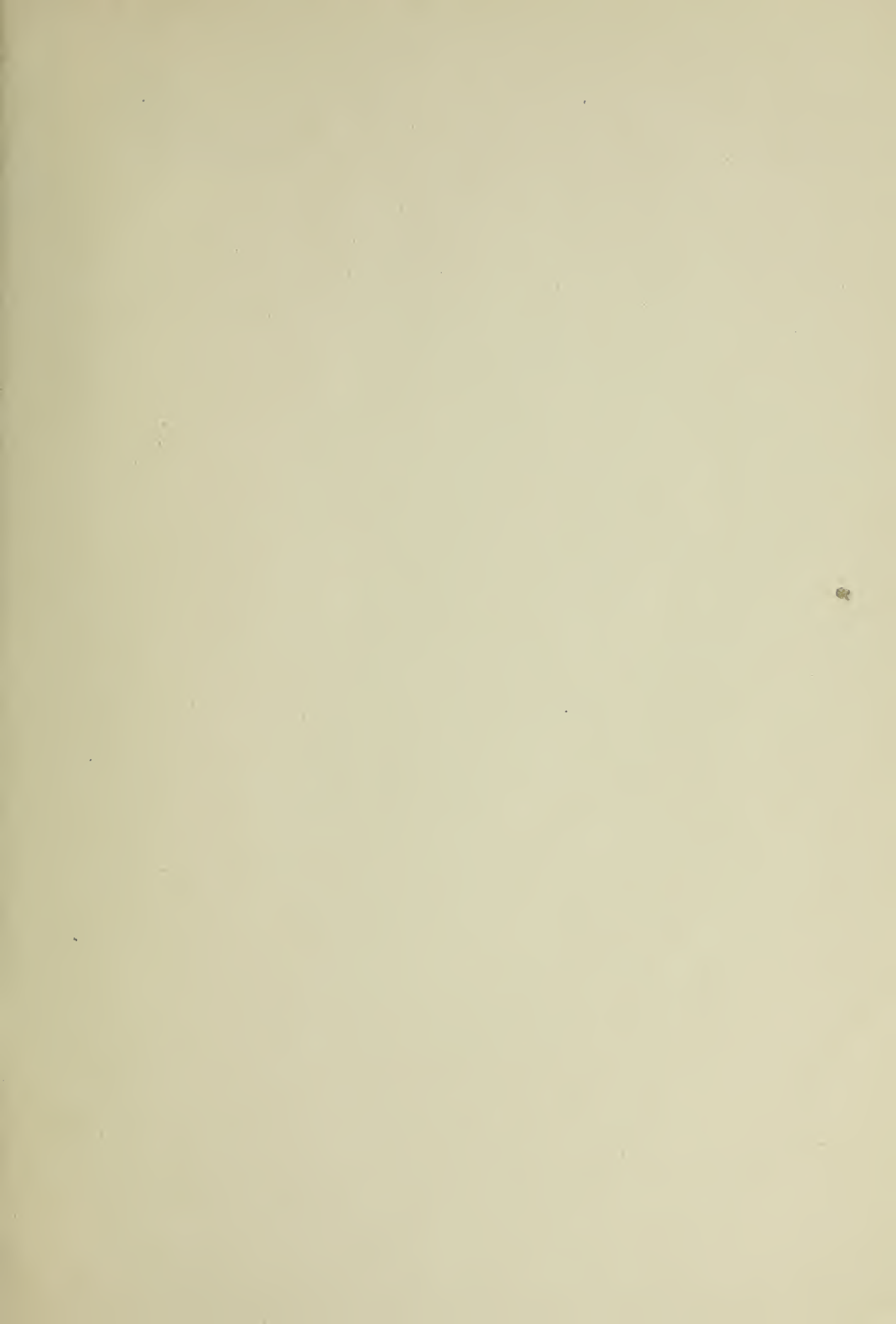
As the Germans have learned, however, it is a measure which is both easy of enforcement and is generally effective in deterring the civil population from committing infractions against the authority of the occupying forces, and these circumstances have accentuated the temptation to abuse the right and to extend it to cases to which it can not be applied, except upon an interpretation which can hardly be reconciled with reason or the generally recognized principles of criminal justice. It was just because of its effectiveness that Leuder, Loening and other German writers have sought to justify the wide extension of the theory and its use on a large scale in the war of 1870-71. There is no difficulty in justifying such a policy, if one only accepts the German doctrine that the test of the legitimacy of an instrument or a measure is its effectiveness, that is, whether its employment contributes to the attainment of the object of the war.⁸²

However strongly we may condemn the general policy of the Germans in respect to the imposition of collective penalties during the present war, it would be going too far to assert that the conduct of the civil population of the districts occupied by the German forces was always irreproachable. It is difficult for an American on the basis of the information now available to reach a definite conclusion as to the truth or falsity of the various charges and countercharges, but it is fair to assume that in some instances the imposition of fines was not

⁸² See, for example, the *Kriegsbrauch im Landkriege* (trans. by Morgan), pp. 69, 84, 85; Leuder in Holtzendorff, Vol. IV, sec. 96; Von Hartmann, *Militärische Nothwendigkeit und Humanität* in the *Deutsche Rundschau*, Vol. XIII, pp. 119 ff. and Vol. XIV, pp. 117 ff. and von Clausewitz on War (Eng. trans. by Graham, Ch. II). See also the views of Field Marshal Prince Schwarzenberg quoted in the *Continental Times* of September 17, 1915. There is little German literature dealing with the levying of collective penalties during the present war which is yet available in America. Meurer's monograph entitled *Die völkerrechtliche Stellung der vom Feind besetzten Gebiete* (1915) contains a brief general defense of the German policy, and Albert Zorn in his *Kriegsrecht zu Land* (1915) apparently finds nothing for which the Germans may justly be reproached. It is a little singular that the German White Book, the Belgian Peoples' War, which contains an elaborate defense of many of the charges that have been made against the Germans in Belgium, gives no attention to the subject of contributions, requisitions or fines. Likewise Stier-Somlo, in a long article dealing with international law in the territories occupied by the German forces (*Zeitschrift für Völkerrecht*, Vol. VIII (1914), pp. 581-608, ignores the Belgian charges that the Germans were guilty of a policy of wholesale spoliation under the form of contributions, requisitions, and collective fines.

unjustified, if we accept the theory of collective responsibility in any form. Nevertheless, it may be said, by way of extenuation of the conduct of the Belgians, where they were really guilty of committing offenses against the authority of the occupying forces, that the provocation under which they acted was extremely great. They were the innocent victims of an unjust invasion; they were expected to remain silent spectators while their land was ravaged and their countrymen put to death in large numbers without cause, as they believed; to all this and more they were required to submit absolutely under the severest penalties. That they should have at times overstepped the hard limits which were thus set to their conduct by a ruthless military conqueror is to have been expected. These extenuating circumstances the Germans might well have taken into account, and where real military necessity required the infliction of punishment in the form of pecuniary exactions, more regard might have been had to the impoverished condition of the inhabitants and their inability to raise exorbitant sums of money. Measures of such severity as those to which the Germans had recourse in many instances are always of doubtful expediency in the end, because instead of subserving a real military necessity they only tend to drive the population to desperation, to arouse an undying hatred against the occupying belligerent, to intensify the spirit of revenge, and finally to make it more difficult to overcome effectively the resistance of the people who are made the victims of such severities.

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